



April 25, 2002

Mr. Ron Clark
Wolfe, Clark, Henderson, Tidwell & McCoy, L.L.P.
123 North Crockett Street, Suite 100
Sherman, Texas 75090

OR2002-2132

Dear Mr. Clark:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 161845.

The City of Bonham Police Department (the "department"), which you represent, received a request for information regarding suicides and attempted suicides for the year 2001, as well as statistics on the number of attempted and successful suicides in the area. You state that the requested statistical information has been released to the requestor. You claim that a portion of the requested information is excepted from disclosure under sections 552.101 and 552.108(a) of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.108(a) of the Government Code provides in pertinent part as follows:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 if:

...

(2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]

Gov't Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. Based on the information you provided, we understand you to assert that the submitted information in Exhibit D pertains to cases that concluded in results other than conviction or deferred adjudication. Therefore, we agree that section 552.108(a)(2) is applicable.

However, section 552.108 is inapplicable to basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). We believe such basic information refers to the information held to be public in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App. --Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Thus, with the exception of the basic front page offense and arrest information, the department may withhold the submitted information in Exhibit D from disclosure based on section 552.108(a)(2). We note that the department has the discretion to release all or part of the remaining information in Exhibit D that is not otherwise confidential by law. Gov't Code § 552.007.

We next address your section 552.101 arguments for both Exhibits D and E. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 encompasses confidentiality provisions such as Family Code section 58.007. Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997 are confidential under section 58.007 of the Family Code. However, based upon our review of the information here at issue, we find no basis to conclude that section 58.007 is applicable to the submitted records.

Section 552.101 of the Government Code protects "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," including information coming within the common-law right to privacy. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Common-law privacy protects information if it is highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, and it is of no legitimate concern to the public. *Id.* at 683-85. In *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977), the Texas Supreme Court specifically held that information that relates to an attempted suicide is excepted from public disclosure pursuant to common law privacy in conjunction with the statutory predecessor to section 552.101 of the Government Code. *Id.* at 683.

In this instance, we conclude that there is no legitimate public interest in the identities of the individuals who allegedly attempted suicide. *See id*; *see also* Open Records Decision Nos. 422 (1984), 396 (1983). Accordingly, we have marked the information that the department must withhold in order to protect the identities of those individuals. However, a deceased person has no right of privacy, and Texas law does not permit the family of a deceased person to maintain an action for the deceased's right of privacy because that right

is personal. Open Records Decision No. 432 (1985), citing *Justice v. Belo Broadcasting Corp.*, 472 F. Supp. 145 (N.D. Tex. 1979); *Wood v. Hustler Magazine, Inc.*, 736 F.2d 1084 (5th Cir. 1984); see *Moore v. Charles B. Pierce Film Enterprises, Inc.*, 589 S.W.2d 489 (Tex. Civ. App.--Texarkana 1979, writ ref'd n.r.e.) (Texas does not recognize relational or derivative right of privacy).

The requested records contain information that is excepted from disclosure under section 552.117(2). The department must withhold those portions of the records that reveal an officer's social security number. We have marked this information for your convenience.

We note that the submitted information contains driver's license numbers. Section 552.130 provides in relevant part:

(a) Information is excepted from the requirement of Section 552.021 if the information relates to:

- (1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; [or]
- (2) a motor vehicle title or registration issued by an agency of this state[.]

The department must withhold the Texas driver's license numbers under section 552.130. However, we note that some of the driver's license numbers in the submitted information are those of deceased individuals. Section 552.130 is designed to protect the privacy interest of an individual. As noted above, this office has determined that privacy rights lapse upon the death of the subject. Therefore, section 552.130 does not except from disclosure the driver's license number of a deceased individual, and any such information must be released in this case.

Finally, we note that the remaining unmarked social security numbers of living individuals in the submitted documents may be confidential under federal law. A social security number may be withheld in some circumstances under section 552.101 in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I). See Open Records Decision No. 622 (1994). These amendments make confidential social security numbers and related records that are obtained and maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. See *id.* The Social Security Act is designed to protect the privacy interest of an individual. As noted above, this office has determined that privacy rights lapse upon the death of the subject. Therefore, federal law does not except from disclosure the social security number of a deceased individual, and any such information must be released in this case. We have no basis for concluding that any of the social security numbers in the responsive records are confidential under section 405(c)(2)(C)(viii)(I), and therefore excepted from public disclosure under section 552.101 of the Act on the basis of that federal provision. We

caution, however, that section 552.352 of the Act imposes criminal penalties for the release of confidential information. Prior to releasing any social security number information, you should ensure that no such information was obtained or is maintained by the department pursuant to any provision of law enacted on or after October 1, 1990.

In summary, with the exception of the basic front page offense and arrest information, the department may withhold the submitted information in Exhibit D from disclosure based on section 552.108(a)(2). We have marked the information that must be withheld under section 552.101 in conjunction with common-law privacy, and the social security numbers of peace officers that are confidential under section 552.117(2). With the exception of those belonging to deceased individuals, Texas driver's license numbers must be withheld under section 552.130. Prior to releasing any social security number information of a living person, the department should ensure that no such information was obtained or is maintained pursuant to any provision of law, enacted on or after October 1, 1990.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental

body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/seg

Ref: ID# 161845

Enc. Submitted documents

c: Mr. Mike Halligan
Executive Director
Texas Mental Health Consumers
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(w/o enclosures)